

STATE OF NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 17-CVS-000248

**SHAWN A. BURNETTE and
CRYSTAL N. KENNEDY,**

Plaintiffs,

v.

**ORANGE COUNTY ANIMAL
SERVICES; Director ROBERT
MAROTTO, in his official capacity; and
Animal Control Manager IRENE PHIPPS,
in her official capacity,**

Defendants.

**SETTLEMENT AGREEMENT
AND RELEASE OF ALL CLAIMS**

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS (the "Settlement Agreement") is made and entered into this 7th day of APRIL, 2017, by and between the following "Plaintiffs" and "Defendants," by and through Orange County, a local political subdivision of the State of North Carolina ("Orange County"). The parties and other terms used herein are defined as follows:

"Plaintiffs" and "Owners"	Shawn A. Burnette and Crystal N. Kennedy.
"Defendants"	Orange County Animal Services; Director Robert Marotto, in his official capacity; Animal Control Manager Irene Phipps, in her official capacity.
"Civil Action"	Refers to the civil action entitled <i>Shawn A. Burnette and Crystal N. Kennedy v. Orange County Animal Services, et al.</i> , filed in Orange County Superior Court, Case No. 17-CVS-000248.
"Dogs"	(1) "Remy," a male gray and white pit bull mix (Animal ID A167097); (2) "Shadow," a male black and white pit bull mix (Animal ID A167105); (3) "Bella," a female tan shepherd mix (Animal ID A167104).
"OCAS" and "Animal Services"	Orange County Animal Services, located at 1601 Eubanks Road, Chapel Hill, NC 27516.
Owners' Property" and "the Property"	Residential Property of Shawn A. Burnette and Crystal N. Kennedy, located at 7707 Atkins Road, Mebane, NC 72703.

RECITALS

- A. Whereas, Defendants impounded Plaintiffs' Dogs on October 30, 2016, following alleged violations of state statutes and local ordinances pertaining to control of potentially dangerous dogs and vicious animals.
- B. Whereas, Plaintiffs alleged in the Civil Action injuries and damages against Defendants related to and stemming from the seizure and impoundment of Plaintiffs' dogs.
- C. Whereas, Plaintiffs and Orange County desire to enter into this Settlement Agreement in order to provide for terms as consideration for full and final settlement and release and discharge of any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, which have been made or might have been made, between Plaintiffs and Defendants. Nothing in this Settlement Agreement shall be read or understood as an admission, statement, or presumption of liability, guilt, negligence, or any fault on behalf of either the Defendants or the Plaintiffs.

I. CIVIL ACTION RELEASE AND DISCHARGE TERMS

The parties agree as follows:

1. Plaintiffs' Release and Discharge.

1.1 In consideration for the terms set forth in Section I-2 ("Defendants' Release and Terms"), Plaintiffs hereby agree to voluntarily dismiss, with prejudice, its Civil Action against Defendants, pursuant to North Carolina Rule of Civil Procedure 41(a)(1).

1.2 In further consideration for the terms set forth in Section I-2, Plaintiffs hereby completely RELEASE and FOREVER DISCHARGE Orange County and Defendants and all of Orange County's and Defendants' representatives, or agents, from any claims, demands, obligations, actions, causes of actions, rights, damages, costs, losses of service, expenses and compensation, under any theory of recovery, whether contract or tort, or punitive damages or treble damages, or interest, whether known or unknown, which directly or indirectly, in whole or in part, relate or are attributable to, connected with, or incidental to incidents between October, 2016 and the date of execution of this Agreement, as described more fully in the Civil Action, Plaintiffs' Amended Complaint (filed March 6, 2017), including all claims for attorney's fees or legal costs which Plaintiffs may have as of the date of this Agreement against Defendants or Orange County and their past or present agents, employees, and officials, all in their individual and official capacities including, but not limited to (i) any claim arising under, or predicated upon, any North Carolina or federal statutes; and (ii) any claim arising under, or predicated upon, any North Carolina common law or federal common law.

1.3 In further consideration for the terms set forth in Section I-2, Plaintiffs agree that Plaintiffs will pay and/or satisfy all of Plaintiffs' costs and attorney's fees associated with the Civil Action and the execution of this Agreement.

2. Defendants' Release and Terms.

In consideration for the release and discharge of all claims as set forth in Section I-1 ("Plaintiffs' Release and Discharge"), Defendants hereby agree to:

2.1 Release to Plaintiffs the Dogs, pursuant to the terms set forth in Section II ("Reclamation and Confinement Terms").

2.2 Permanently reverse the previous determinations that Bella is "potentially dangerous" under North Carolina General Statute § 67-4.1(a)(2)b; and "vicious" under Orange County Ordinance, Section 4-42(b)(3).

2.3 Permanently revoke and void the civil charges and penalties expressed in Orange County Animal Control Citation #1048 ("Date of Violation" October 30, 2016; "Date Issued" February 3, 2017).

2.4 Permanently revoke and void the civil charges and penalties expressed in Orange County Animal Control Citations #1618, #1619, and #1620 ("Date of Violation" October 3, 2016; "Date Issued" February 3, 2017 (all)).

2.5 Permanently revoke and void the civil charges and penalties expressed in Orange County Animal Control Citations # 1621#1622; and #1623 ("Date of Violation" October 30, 2016; "Date Issued" February 3, 2017 (all)).

2.6 Defendants agree that Defendants will pay and/or satisfy all of Defendants' costs and attorney's fees associated with the Civil Action and the execution of this Agreement.

II. RECLAMATION AND CONFINEMENT TERMS

The parties agree to the following Reclamation and Confinement Terms, for the lifespan of the Dogs, unless terminated in writing upon the agreement of both parties:

1. Permitted Places.

Remy and Shadow will be confined in the Owners' house or in a Secured Enclosure while on the Property as provided in Section 4 below. When off the Property, Remy and Shadow must be leashed, muzzled, and restrained by a competent person over the age of eighteen in the Permitted Places as provided in N.C. Gen. Stat. § 67-4.2 and Orange County Code of Ordinances § 4-42(d). OCAS must be notified and approve of

any request to relocate Remy and/or Shadow to any location other than the Property, to assure that the conditions of confinement are consistent with the terms of this Agreement and state and local laws.

2. Microchip Identification.

Prior to being released to the Owners, the Dogs will be microchipped. OCAS will provide the identification numbers of the microchips to the Owners.

3. Payment of Fees.

Prior to release of the Dogs, the Owners agree to pay Animal Services Six Hundred Seventy-Five dollars (\$675) for expenses, boarding costs, redemption privilege taxes and costs associated with the impoundment as restitution for costs incurred by Animal Services during the impoundment of the animals. (See Table 1).

Table 1

Item	Animal Identification	Unit Fee	Quantity	Total Item Fee
Board (10-day Quarantine)	Remy	\$15	10	\$150
First Reclaim	Remy	\$25	1	\$25
Microchip	Remy	\$25	1	\$25
Licensing (with late fee)	Remy	\$15	1	\$15
Rabies Vaccination	Remy	\$10	1	\$10
Actual Fees, Remy				\$225
Board (10-day Quarantine)	Shadow	\$15	10	\$150
First Reclaim	Shadow	\$25	1	\$25
Microchip	Shadow	\$25	1	\$25
Licensing (with late fee)	Shadow	\$15	1	\$15
Rabies Vaccination	Shadow	\$10	1	\$10
Actual Fees, Shadow				\$225
Board (10-day Quarantine)	Bella	\$15	10	\$150
First Reclaim	Bella	\$25	1	\$25
Microchip	Bella	\$25	1	\$25
Licensing (with late fee)	Bella	\$15	1	\$15
Rabies Vaccination	Bella	\$10	1	\$10
Actual Fees, Bella				\$225
ADJUSTED TOTAL				\$675

4. Confinement Requirements.

- a. Secured Enclosure. To assure the security of the Dogs, and pursuant to the requirements under Orange County ordinance section 4-42(d)(1)(a)(i), the Owners agree to provide and maintain a secured enclosure that will prevent the entry of young children; prevent the Dogs from escaping; and provide the Dogs protection from the elements. Specifically:
 - i. the enclosure shall be of sufficient height and contain a lip around the perimeter of the top of the enclosure in order to prevent the Dogs from escaping over the fence;
 - ii. the fencing shall be securely anchored to the ground to prevent the Dogs from escaping under the fence;
 - iii. the gate shall include a fully operational self-closing and self-latching mechanism;
 - iv. the gate shall be securely locked at all times when the dogs are within the enclosure.
- b. Signage. "Beware of Dog" signs shall be posted and maintained on each entrance to the home and the sides and gate of the outside enclosure.
- c. Inspection. Prior to release of the Dogs to the Owners, Animal Services shall inspect the Secured Enclosure to ensure that it is in compliance with the requirements outlined above in 4(a).
- d. Outside Secured Enclosure.
 - i. When Remy and Shadow are not inside the home or inside of the Secured Enclosure described in 4(a), above, Remy and Shadow must be doubled leashed on two (2) sufficiently strong and sturdy non-retractable leashes less than 8 feet in length and under the control of a responsible adult (18 years or older). One leash shall be affixed to a strong, sturdy, and secure buckle collar or choke chain collar and the other attached to a sturdy and well-fitted body harness.
 - ii. If Remy and/or Shadow are off the Property, the animals must be double leashed, muzzled, and under the control of a responsible adult.
 - iii. At no time are Remy or Shadow to be allowed to go outside of the home or fenced area on the Property for any reason unattended and without the restraint described above in 4(d).

5. Termination.

If the Owners are found, either upon direct observation of an Animal Services officer or upon receipt by Animal Services of a written complaint from an adult

person and the Animal Services officer has probable cause to believe that Owners were not in compliance with the Confinement Requirements described in Section 4 of this Agreement, the Owners grant permission for Animal Services to enter onto the Owners' Property and to seize and impound Remy and Shadow. Any future impoundment of Remy and Shadow for violation of this Agreement is a final decision by the Animal Services Director that may be appealed by Owners as provided in Orange County Animal Control Ordinance § 4-53. Remy and/or Shadow shall be released to Plaintiffs if, upon exhaustion of the appeals process described in sec. 4-53, the Animal Services Director's final decision is overturned. Alternatively, Remy and/or Shadow shall be surrendered to Animal Services if the Director's decision is affirmed upon exhaustion of the appeals process in sec. 4-53, without further administrative or legal process, for disposition in accordance with departmental policies and procedures.

6. Compliance with Laws.

The Owners must comply with all state laws and Orange County Ordinances regulating dogs, including Orange County Code of Ordinances, Chapter 4 Animals, Article II Animal Control.

7. Cooperation for Inspection of Premises.

The Owners grant Animal Services permission to enter onto the Property unannounced to inspect the property annually for compliance with this Agreement. The Owners agree to cooperate with all such compliance inspections of the Property.

8. Waiver.

This Agreement does not preclude or waive Animal Services' right to seek any legal remedy available, including criminal sanctions and collections efforts, related to any future violations of state law and local ordinances by the Owners and/or their dogs.

9. Indemnity.

The Owners agree to defend, indemnify, and hold harmless the County from all losses, liabilities, claims, demands, suits, costs, damages or expenses (including attorney's fees) arising out of or related to issues that may arise subsequent to the execution of this Settlement Agreement, including any bodily injury, or death, to any person or persons, or damage to or destruction of any property in whole or part by any negligent or intentional act or omission on the part of Owners' failure to comply fully with the terms of this Agreement. It is the extent of this provision to require the Owners indemnify the County to the fullest extent permitted under North Carolina law.

10. License and Vaccination.

Prior to being released to the Owners, the Owners must license the Dogs and have the Dogs vaccinated against rabies.

III. MISCELLANEOUS

The parties agree as follows:

1. Entire Agreement and Signatures.

The parties have read this Agreement and agree to be bound by all of its terms, and further agree that it constitutes the complete and exclusive statement of the Agreement between the parties unless and until modified in writing and signed by both parties. Modifications may be evidenced by telefacsimile signature. This Agreement together with any amendments or modifications may be executed electronically. All electronic signatures affixed hereto evidence the intent of the Parties to comply with Article 11A and Article 40 of North Carolina General Statute Chapter 66

2. Governing Law.

This Settlement Agreement shall be governed by the laws of the State of North Carolina and Orange County. Venue shall be proper in the Courts of General Jurisdiction in Orange County, North Carolina.

3. Warranty of Capacity to Execute Agreement.

Plaintiffs represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of actions referred to in this Settlement Agreement; that Plaintiffs have the sole right and exclusive authority to execute this Settlement Agreement; and that Plaintiffs have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

4. No Admission of Guilt or Liability.

Plaintiffs and Defendants understand and agree that this Agreement represents a compromise of disputed claims and is intended merely to terminate any and all claims and avoid further litigation among the parties. Entry into this Agreement shall not be construed as an admission on the part of Orange County or Defendants of any violation of the rights and interests of Plaintiffs, and Orange County and Defendants expressly deny having committed any wrongdoing and further deny liability under any theory of law for any of its actions. Except as otherwise provided herein, entry into this Agreement shall not be construed as an admission on the part of Plaintiffs of any violation of state law or county ordinance except as provided in paragraph I-2.6, above.

5. Agreement Not to Pursue Claims.

Plaintiffs agree not to institute or pursue any lawsuit, grievance, or proceeding in any forum that is in any based upon or arising out of any matter involving Plaintiffs from October 2016 through the execution of this Agreement except as provided in paragraph I-2.6, above; and further Plaintiffs agree to dismiss with prejudice and withdraw, in addition to what is described above, any other active lawsuits, charges, complaints, or other actions with any state or federal agency or court based upon such matters. Plaintiffs agree to file a Voluntary Dismissal with Prejudice no later than five (5) business days after execution of this Settlement Agreement, including completion of all obligations under Section II ("Reclamation and Confinement Terms"). The parties have the right to seek enforcement of any provision of this Agreement by filing it in any necessary court.

6. Severability.

If any of the provisions of this Agreement are determined to be invalid or unenforceable, that provision so determined shall be severable from the other provisions of this Agreement, and the Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been included herein.

7. Full Cooperation.

The Parties agree to cooperate fully to execute any and all supplemental documents necessary to effectuate this Agreement, and to take all additional action that may be necessary to give full force and effect to the terms of this Agreement.

By the signatures below, the parties indicate that they have read, understand, and agree with the terms and conditions stated in this Agreement, and by their signature they acknowledge the agreement and that in signing this Agreement they intend to be legally bound by it.

This is the 7th day of April, 2017.

Crystal Kennedy
Crystal Kennedy

4/7/17
Date

Shawn Burnette
Shawn Burnette

4/7/17
Date

Bonnie Hammersley
Bonnie Hammersley
Orange County Manager

4/7/17
Date